



बिहार गजट

असाधारण अंक

बिहार सरकार द्वारा प्रकाशित

20 श्रावण 1939 (श0)
(सं0 पटना 700) पटना, शुक्रवार, 11 अगस्त 2017

निर्वाचन विभाग

अधिसूचना

31 जुलाई 2017

सं0 एम1-0020/2013-32—निर्वाचन अर्जी संख्या-9/2015 में माननीय उच्च न्यायालय, पटना द्वारा दिनांक 20.03.2017 को पारित आदेश सर्वसाधारण की जानकारी के लिए प्रकाशित की जाती है।

बिहार-राज्यपाल के आदेश से,
सोहन कुमार ठाकुर,
अपर सचिव।

भारत निर्वाचन आयोग

अधिसूचना

निर्वाचन सदन, अशोक रोड, नई दिल्ली-110001 तारीख 8 जून, 2017/18 ज्येष्ठ, 1939 (शक)

सं० 82/BR-LA/ES-1/EP/(9/2015)/2017:—लोक प्रतिनिधित्व अधिनियम 1951 (1951 की 43) की धारा 106(ख) के अनुसरण में, निर्वाचन आयोग एतद्वारा निर्वाचन अर्जी सं० 09/2015 में दिये गये उच्च न्यायालय, पटना के तारीख 20 मार्च, 2017 के आदेश को प्रकाशित करता है।

आदेश से,
सुमित मुखर्जी,
सचिव,
भारत निर्वाचन आयोग।

ELECTION COMMISSION OF INDIA

NOTIFICATION

*Nirvachan Sadan, Ashoka Road, New Delhi-110001 Dated 8th June, 2017/
18 Jyaistha, 1939 (Saka)*

No. 82/BR-LA/ES-1/EP/(9/2015)/2017: In pursuance of Section 106(b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Order dated the 20th March, 2017 of the High Court of Judicature at Patna in Election Petition No. 09/2015.

By/order,
SUMIT MUKHERJEE,
SECRETARY,
ELECTION COMMISSION OF INDIA.

IN THE HIGH COURT OF JUDICATURE AT PATNA
Election Petition No.9 of 2015

Anuj Kumar Sinha, son of Late Sionandan Prasad , resident of c/o Gulav Yadav, Rajcolony, Puccafield, Maharanipath, New godown, Gaya District Gaya - 823002

.....Petitioner/s

Versus

Prem Kumar, s/o Late Shyam Narayan Ram Mukhlotgunj Mahavir Asthan Gaya -823001

.....Respondent/s

Appearance :

For the Petitioner/s :Mr. Jai Vardhan Narayan. Advocate

For the Respondent/s: Mr. Shree Prakash Shrivastava, Advocate

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
CAV ORDER

15 20 -03-2017 1. The present petition has been filed under Section 80, 80A and 81 of the Representation of the People Act, 1951 (hereinafter referred to as the " RP Act"). As pleaded, the petitioner was an election agent of one Sri Priya Ranjan who was a candidate of the Indian National Congress and contested Legislative Assembly election from the Constituency No. 230 - Gaya Town (Bihar). The Legislative Assembly election was conducted in the year 2015. The election was held on 16th October 2015 and result was declared on 8th November, 2015. From the said constituency i.e. 230-Gaya Town Constituency the Respondent was declared as returned candidate. In the said election he (respondent) got total 66,891 votes whereas, the candidate for whom the petitioner was election agent got 44102 votes.

2. In the present election petition Vice petitioner has mainly prayed for cancellation of nomination paper of the respondent, It is evident that earlier the present election petition was presented on 15.12.2015. The election petitioner was duly identified by his counsel namely, Mr. Md. Irshad Thereafter,— the petition was examined by the stamp reporting section and number of defects were pointed out and as such; on 11.02.2016 learned counsel for the election petitioner informed the court regarding removal of the defects and as such, by order dated 11.02.2016 the present election petition was admitted for hearing and notice was directed to be issued to the sole respondent.. After receipt of notice the sole respondent appeared through his counsel and on 4th May 2016 written statement was filed on behalf of the returned candidate i.e. respondent. Besides raising other objections the respondent also raised an objection regarding maintainability of the election petition for want of cause of action. Subsequently, the election petitioner filed an application for permitting him to appear in person. The said permission was granted and learned lawyer who had earlier filed "Vakalatnama" on behalf of the election petitioner was discharged from liability. On 12.05.2016 the election petitioner was permitted to appear in person and on his request case was adjourned for filing proposed issues by both the parties, which was subsequently filed. Thereafter, the petitioner engaged one another counsel namely Sri Jai Vardhan Narayan , who has appeared on behalf of the petitioner. The respondent / returned candidate thereafter filed an interlocutory application vide I.A. No. 6627 of 2016 under Section 83 and 86 of the RP Act read with Order VII Rule 11 of the Code of Civil Procedure. The respondent by way of filing the said interlocutory application prayed for rejection of the election petition on the ground of non disclosure of any cause of action. After filing of the interlocutory application vide I.A. No. 6627 of 2016, whereby the respondent had made a prayer for rejecting the election petition on the ground of absence of any

cause of action, the election petitioner filed an amendment petition vide I.A. No. 7997 of 2016. The interlocutory application praying for rejection of election petition i.e. I.A. No. 6627 of 2016 was filed on 17th August 2016 whereas the petition for amendment i.e. I.A. No. 7997 of 2016 was filed on behalf of the election petitioner on 28th September 2016. Thereafter, both the petitions were heard and order was reserved on 24.01.2017.

3. Since in the present election petition interlocutory application was filed on behalf of the returned candidate i.e. the sole respondent for rejection of the election petition on the ground of absence of any cause of action, the court is of the opinion that it would be just and proper to quote the reliefs which have been sought for in the main election petition, which are as follows:-

i. For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent nos. 1 to 4 for cancellation of nomination paper of Respondent nos. 5.

ii. For issuance of an appropriate writ, order or direction in the nature of examination of affidavits by competent independent agency having expertise in such evaluation.

iii. For issuance of an appropriate writ, order or direction in the nature of procedures for verification of affidavits, related to the use of affidavits in election process on finding possibilities of malicious damage and that this examination be carried out by competent independent agency having expertise in such examination of affidavits.

iv. For issuance of an appropriate writ, order or direction in the nature directing the Respondent nos. 1 to 4 to provide for affidavits verifiable Audit Trial in all coming election where affidavits are used.

v. For issuance of an appropriate writ, order or direction in the nature of any other relief that the Hon'ble Court may find appropriate"

4. Now, the question which is required to be examined is as to whether the election petition contains concise statement of material facts relating to any corrupt practice adopted by the returned candidate/Respondent. Accordingly, it would be appropriate to incorporate the facts disclosed in the election petition i.e. from paragraph nos. 3 to 23 of the election petition, which are as follows:-

"3. That, the petitioner is a citizen of India also election agent in same election for candidate Priy Ranjan, Indian National Congress and resides within the territorial jurisdiction of this Hon'ble High Court.

4. That, 230-Gaya Town is one of the oldest Constituency Assembly in the District of Gaya. It had its glorious status while it was under the hands of genuine person as the Member of Legislative Assembly but after it has gone in the hands of nefarious person, it has lost its all previous credit and prestige.

5. That it is stated that in the year 2015, when the election was held for the Bihar Legislative Assembly Election 2015 through the State and under the direct control of the Election Commission of India, the Respondent no. 5 was elected for the Member of Legislative Assembly from 230-Gaya town.

6. That, since the date of his election, the Respondent no. 5 has never conducted any affidavits genuinely though the petitioner has knowledge that he has prepared the proceeding book of the cancel of the nomination and voids the election result with the forged affidavit.

7. That, thereafter, benefit of this Membership of Member of Legislative Assembly for 230-Gaya Town has never been for its voters. It is the Respondent no. 5, who in connivance with the local Authority had misutilized his position of M.L.A. of 230-Gaya Town for his personal benefits.

8. That, under Section — 33 and its Sub section 33A, and 33B, of the Representation of People Act 1951, provision has been made for admission to nomination of Legislative Election. It requires that every person desiring admission to nomination of a Legislative Assembly Election shall furnish information on Form 26 (affidavits).

9. That, in the judgment of Writ Petition (Civil) No. 121 of 2008 by Hon'ble Supreme Court of India however puts a clarification of Article 32 of the Constitution of India for furnishing information by candidate and make it compulsory for the Returning Officers to ensure that the affidavits filled by the Contestants are complete in all respect and to reject affidavits or cancel the nomination paper of contestant having affidavits ground, such Respondent no. 5 shall made a unlawful affidavits.

10. That the petitioner would, therefore respectfully submit that if a Respondent no. 5 did not fulfill the eligibility for admission of nomination paper of such election and void the Article 32 of the Constitution of India Respondent no. 5 would not be allowed to membership of Bihar Legislative Assembly.

11. That, so far 230-Gaya Town assembly is concerned the conduct by the Respondent no. 1 to 4 would show that probably unlawful under

Section 33, 33A and 33B and Article 32 of the Constitution of India does not apply to 230-Gaya Town assembly seat and, therefore 230-Gaya Town is exception to all other constituency assembly in the State.

12. That so far 230-Gaya Town assembly is concerned the conduct by the Respondent no. 5 would throughout from nomination to declaration of result are unlawful and showing corrupt practices by himself. Also respondent no. 3 and respondent no. 4 help in work of Respondent no 5 for do unlawful work and directly profit the Respondent no. 5.

13. That the Election Commission of India has already declared results of election in the State, According to which in 230-Gaya Town.

14. That, according to the result notified by the Election Commission of India, the Respondent Authority have prepared a elected candidate for Bihar Legislative Election 2015 election and it has been published for gazette notification and Government formation in Bihar have been invited

15. That after going through the result when the petitioner came to know that in order to become the Respondent nos. 1 to 4 in connivance with the Respondent no. 4 has declared result of election to ineligible person, they were shocked of the illegalities.

16. That after going through the affidavits when the petitioner came to know that fake or unlawful affidavits have been made contrary to Article 32 of the Constitution of India and Section 33 33A, and 33B, of the Representation of People Act 1951 the petitioner drafted an election petition against the said illegal inclusion of information in the affidavits and had approached the petitioner for the purpose of filing of their election petition as required

17. That, since all these illegalities have been done by the Respondent no. 5 in connivance with the Respondent nos. 1 to 4, did not cancel the nomination paper at the time of nomination the election petition filed by the petitioner.

18. That under the circumstance, the petitioner was left with no option but to approach the Hon'ble Court against the illegalities in preparation of affidavit by the Respondent no. 5, in accordance with law.

19. That, at this juncture, the petitioner would like to the notice of this Hon'ble Court, a sample of illegalities done by the Respondent nos. 1 to 4 from which it would be evidently clear that in impugned affidavits which no authority is ready to entertain contrary to section 33, 33A and 33B, of the Representation of People Act, 1951 nor Article 33 of the Constitution of India

20. That at the time of election period from nomination to declaration of results, the petitioner would like to the notice of this Hon'ble Court that the function of Respondent no. 3 and Respondent no. 4 are in favourable to support to Respondent no. 5 in getting results of winner contestant candidate.

21. That, from the facts stated hereinbefore it is apparently clear the Respondent no. 5 does not have respect for law at all and they are going to election on the basis of the unlawful affidavit which is absolutely illegal and cannot be appreciated in the eye of law.

22. That, from the facts stated hereinbefore it is apparently clear the Respondent no. 3 and Respondent no. 4 also does not have respect for law at all and they are going to election on the basis of unlawful work for profit of Respondent no. 5 which is absolutely illegal and cannot be appreciated in the eye of law.

23. That, under the facts and circumstances stated hereinbefore, the petitioner has got no other alternative or efficacious remedy except to move this Hon'ble High Court for vindication of his justified grievance.

24. That, the petitioner has not moved before this Hon'ble Court earlier for the relief as sought for in the present election petition."

5. Sri Shree Prakash Shrivastava, learned counsel for the returned candidate / sole respondent has argued that on the basis of pleadings in the election petition it is evident that only vague statement was made regarding allegation of corrupt practice against the respondent. Neither it has been stated as to what corrupt practice was adopted by the returned candidate nor such allegation has been substantiated by any specific statement made in the election petition. According to learned counsel for the respondent as per Section 81 of the RP Act an election petition calling in question any election may be presented on one or more of the grounds specified in Section 100 and Section 101 within 45 (forty-five) days from the date of election and Section 83 of the RP Act specifically provides that such petition must contain concise statement of material facts and shall set forth full particulars of any corrupt practice as alleged. According to learned counsel for the respondent these provisions are mandatorily required to be

complied with otherwise the election petition is required to be rejected at the threshold. It has also been argued by Sri Shrivastava, learned counsel for the respondent that election petition is fit to be rejected on the ground that in the election petition the election petitioner has mainly prayed for cancellation of nomination paper of the respondent. In the prayer portion nothing has been sought for regarding cancellation of the declared result of the returned candidate.

6. Jai Vardhan Narayan, learned counsel for the election petitioner tried to persuade the Court to examine the facts disclosed in the synopsis of the election petition and he wanted to persuade the Court that in synopsis all facts have been stated. He further submits that in this case the election petitioner has filed an amendment petition and in the amendment petition the cause of action and case of the election petitioner has concisely been dealt with full allegation of corrupt practice adopted by the returned candidate. He makes a prayer for allowing the amendment petition and even in absence of amendment petition he emphasized that once in the election petition in the synopsis all those facts were mentioned there was no necessity to incorporate all those facts in the election petition and this Court may reject the interlocutory application i.e. T.A. No. 6627 of 2016 which has been filed by the respondent for rejecting the election petition. Sri Jai Vardhan Narayan, learned counsel to substantiate his submission regarding examining material facts on record has placed heavy reliance on a recent judgment of the Hon'ble Apex Court in a case reported in **AIR 2015 SUPREME COURT 147 (Ashraf Kokkur v. K.V. Abdul Khader etc.)**. According to learned counsel for the election petitioner in view of Ashraf Kokkur Case (Supra) the allegation which have been mentioned in the synopsis of the election petition can well be proved in-course of trial by way of producing the evidences and in any event at the outset the election petition is not required to be rejected.

7. Replying to the submission of learned counsel for the election petitioner, Sri Shrivastava, learned counsel for the respondent has argued that since in the RP Act there is provision for filing election petition within 45 days from the date of election, at this belated stage the amendment petition which substantially changes the case of the election petitioner is required to be rejected in view of the provisions contained in Section 86(5) of the RP Act. To substantiate his submission he has placed reliance on a judgment of the Apex Court reported in **AIR 1987 SC 1577 (Dhartipakar Madan Lai Agarwal v. Shri Rajiv Gandhi)**. He submits that after commencement of trial in the election petition and in view of restriction imposed under Section 86(5) of the RP Act the amendment petition is required to be rejected. According to learned counsel for the respondent since in the election petition there is no statement disclosing proper cause of action nor specific statement to corroborate the allegation of corrupt practice the election petition is fit to be rejected at the outset. On this very point he has placed reliance on a judgment of Hon'ble Apex Court in a case reported in **AIR 1969 SC 1201 (Samant N. Balakrishna v. George Fernandez and others)**. In sum and substance it has been argued that the election petition in absence of any specific cause of action and statement regarding allegation of corrupt practice is fit to be rejected.

8. Besides hearing learned counsel for the parties I have **perused** the materials available on record. So far submission made by learned counsel for the election petitioner that facts disclosed in the synopsis of the petition may be taken note of for adjudicating the interlocutory application filed by the respondent regarding rejection of the election petition is concerned, the Court is of the opinion that only on the basis of facts disclosed in the synopsis of the election petition case may not be adjudicated. A case is to proceed primarily on the basis of facts disclosed in the election petition as well as reliefs sought for in the petition. The reliefs which have-been sought for in the present election petition has already been indicated in preceeding paragraphs of this order. On perusal of the reliefs sought for in the

petition the Court is of the opinion that once the result of election has already been declared and respondent has come out as returned candidate, thereafter there is no point to examine the veracity of the nomination paper. Moreover, in the election petition though election petitioner has brought on record about 8 annexures separately verified and affidavited, the election petitioner has not brought on record any document to show that he had raised any objection regarding the nomination of the returned candidate before the election officer. Annexure '6' which has been brought on record through verification and affidavit shows that after the election the candidate namely Sri Priya Ranjan who was a candidate of Indian National Congress for whom the petitioner had acted as election agent had raised demand of re-election of 230 Gaya Assembly Constituency. It would be appropriate to quote Annexure '6' which is as follows:-

"To

The Returning Officer

230, Gaya Assembly Constituency, Gaya

Sub:- Demand for Re-election of 230 Gaya assembly constituency.

D/sir,

With due respect I inform you and derived for in election of Gaya town constituency since as per VTR report and presiding officer report for booth no.-93 of Gaya town constituency total vote casted (turnout) is 901 (nine hundred one) but at counting table it is showing 902 total vote casted, how is the difference carry since which of the election proceeding is in defeated form.

So I demand cancellation of Gaya Town constituency and re-election on Gaya town constituency no. 230.

Thank you

Your's truly

Priya Ranjan

Candidate INC

Gaya Town

Constituency no. 230

C.C. to;

1. Chief Election Commissioner

2. Observer Gaya town 230

3. District Election Officer cum District Magistrate"

9. On perusal of Annexure '6' as mentioned above it is evident that Sri Priya Ranjan had demanded re-election before the Returning Officer of the Gaya Assembly Constituency only on dispute of one vote at a particular booth i.e. booth no. 93 and no other dispute was raised by the candidate for whom petitioner was an election agent. In the election petition as quoted hereinabove it is evident that only vague statements were made regarding nomination and referred certain provisions of the RP Act but no concise statement of material facts relating to allegation of corrupt practice was shown.

10. So far I.A. No. 7997 of 2016 filed under section 86(5) of the RP Act on behalf of the election petitioner is concerned the court is of the opinion that after commencement of trial and that too after gap of such a long time such amendment petition is fit to be rejected. As per explanation to Subsection 4 of Section 86 of the RP Act trial of election petition shall be deemed to commence on the date fixed for the respondents to appear before the High

Court and answer the claim or claims made in the petition". After presentation of the present election petition for the first time on 11.02.2016 notice was directed to be issued to the sole respondent fixing 31st March 2016 for his appearance and filing written statement. Meaning thereby that in view of explanation to subsection 4 of Section 86 of the RP Act trial in the present case had commenced with effect from 31st March 2016. Thereafter, the respondent filed written statement and also raised objection regarding maintainability of the election petition. Subsequently the respondent filed a petition under Section 83 and 86 of the RP Act read with Order VII Rule 11 of the Code of Civil Procedure vide I.A. No. 6627 of 2016 with a prayer to reject the election petition on the ground of absence of material facts and cause of action. Only thereafter the election petitioner filed amendment petition. So far amendment in the election petition is concerned Section 86(5) of the RP Act deals with restriction regarding amendment petition. Other hurdle to the election petitioner in respect of prayer of his amendment is the provision contained in Order VI Rule 17 of the Code of Civil Procedure, 1908 (hereafter referred to as the "CPC"). At this juncture it would be to appropriate to quote Section 87 of the RP Act, which is as follows:-

"87. Procedure before the High Court.- (1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908) to the trial of suits:

Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(2) The provisions of the Indian Evidence Act, 1872 (1 of 1872) , shall subject to the provisions of this Act. be deemed to apply in all respects to the trial of an election petition."

11. Meaning thereby that the procedure prescribed in the CPC is also required to be followed in the election petition and as such, in view of Rule 17 Order VI of the CPC after commencement of trial the amendment petition is fit to be rejected. At this juncture it would be necessary to quote Rule 17 Order VI of the CPC

"17. Amendment of pleadings.-The court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose

of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

12. The proviso to Rule 17 of Order VI makes it clear that after the commencement of trial amendment petition is ordinarily required to be rejected. Moreover, on this very point Sri Shrivastava, learned counsel for the respondent has heavily placed reliance on Dhartipakar Case (Supra). The said issue has been dealt with in paragraph no. 31 of the judgment, which is as follow:

"31. The above scanning of the election petition would show that the appellant failed to plead complete details of corrupt practice which could constitute a cause of action as contemplated by S. 100 of the Act and he further failed to give the material facts and other details of the alleged corrupt practices. The allegations relating to corrupt practice, even if assumed to be true as stated in the various paras of the election petition do not constitute any corrupt practice. The petition was drafted in a highly vague and general manner. Various paras of the petition presented disjointed averments and it is difficult to make out as to what actually the petitioner intended to plead. At the conclusion of hearing of the appeal before us appellant made applications for amending the election petition, to remove the defects pointed out by the High Court and to render the allegations of corrupt practice in accordance with the provisions of S. 33 read with S. 123 of the Act. Having given our anxious consideration to the amendment applications, we are of the opinion that these applications cannot be allowed at this stage. It must be borne in mind that the election petition was presented to the Registrar of the High Court at Lucknow Bench on the last day of the limitation prescribed for filing the election petition. The appellant could not raise any ground of challenge after the expiry of limitation. Order IV, Rule 17 no doubt permits amendment of an election petition but the same is subject to the provisions of the Act Section 87 prescribes a period of 45 days from the date of the election for presenting election petition calling in

question, the election of a returned candidate. After the expiry of that period no election petition is maintainable and the High Court or this Court has no jurisdiction to extend the period of limitation. An order of amendment permitting a new ground to be raised beyond the time specified in S. 81 would amount to contravention of those provisions and beyond the ambit of S. 87 of the Act. It necessarily follows that a new ground cannot be raised or inserted in an election petition by way of amendment after the expiry of the period of limitation. The amendments claimed by the appellant are not in the nature of supplying particulars instead those seek to raise new ground of challenge. Various paras of the election petition which are sought to be amended do not disclose any cause of action, therefore, it is not permissible to allow their amendment after expiry of the period of limitation. Amendment applications are accordingly rejected."

13. Moreover, now the point which has been raised by the respondent regarding rejection of the election petition in absence of any specific concise cause of action as well as absence of statement regarding allegation of corrupt practice is concerned, on going through the pleadings in the election petition the Court is of the opinion that the petition lacks basic feature for maintaining the present election petition. In the election petition as specified under Section 83 of the RP Act it is mandatorily required to disclose concise statement of the material facts and particulars regarding corrupt practice. This point was considered in detail by the Hon'ble Supreme Court in the case* of Samant N. Balakrishna v. George Fernandez (AIR 1969 SC 1201), on which reliance was placed by learned counsel for the respondent. I may not do better than to only quote paragraph nos. 29 of the said judgment, which is as follows:-

"29. Having dealt with the substantive law on the subject of election petitions we may now turn to the procedural provisions in the Representation of the People Act. Here we have to consider Ss. 81, 83 and 86 of the Act. The first provides the procedure for the presentation of election petitions. The proviso to subsection alone is material here. It provides that an election petition may be presented on one or more of the grounds specified in subsection (1) of S. 100 and S.101. That as we have shown above creates the substantive right. Section 83 then provides that the election petition must contain a concise statement of the material facts on which the petitioner relies and further that he must also set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of

each such practice. The Section is mandatory and requires first a concise statement of material facts and then requires the fullest possible particulars. What is the difference between material facts and particulars? The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct. Thus the material facts will mention that a statement of fact (which must be set out) was 'false' and it must be alleged that it refers to the character and conduct of the candidate that it is false or which the returned candidate believes to be false or does not believe to be true and that it is calculated to prejudice the chances of the petitioner. In the particulars the name of the person making the statement, with the date, time and place will be mentioned. The material facts thus will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. In stating the material facts it will not do merely to quote the words of the Section because then the efficacy of the words 'material facts' will be lost. The fact which constitutes the corrupt practice must be stated and the fact must be correlated to one of the heads of corrupt practice. Just as a plaint without disclosing proper cause of action cannot be said to be a good plaint, so also an election petition without the material facts relating to a corrupt practice is no election petition at all. A petition which merely cites the sections cannot be said to disclose a cause of action where the allegation is the making of a false statement The statement must appear and the particulars must be full as to the person making the statement and the necessary information. Formerly the petition used to be in two parts. The material facts had to be included in the petition and the particulars in a schedule. It is inconceivable that a petition could be filed without the material facts and the schedule by merely citing the corrupt practice from the statute. Indeed the penalty of dismissal summarily was enjoined for petitions which did not comply with the requirement. Today the particulars need not be separately included in a schedule but the distinction remains. The entire and complete cause of action must be in the petition in the shape of material facts, the particulars being the further information to complete the picture. This distinction is brought out by the provisions of Section 86 although

the penalty of dismissal is taken away. Sub-section (5) of that Section provides:

(5) "The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the • petition."

The power of amendment is given in respect of particulars but there is a prohibition against an amendment "which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition". One alleges the corrupt practice in the material facts and they must show a complete cause of action. If a petitioner has omitted to allege a corrupt practice, he cannot be permitted to give particulars of the corrupt practice. The argument that the latter part of the fifth sub-section is directory only cannot stand in view of the contrast in the language of the two parts. The first part is enabling and the second part creates a positive bar. Therefore, if a corrupt practice is not alleged, the particulars cannot be supplied. There is however a difference of approach between the several corrupt practices. If for example the charge is bribery of voters and the particulars give a few instances, other instances can be added; if the charge is use of vehicles for free carriage of voters, the particulars of the cars employed may be amplified. But if the charge is that an agent did something, it cannot be amplified by giving particulars of acts on the part of the candidate or vice versa. In the scheme of election law they are separate corrupt practices which cannot be said to grow out of the material facts related to another person. Publication of false statements by an agent is one cause of action, publication of false statements by the candidate is quite a different cause of action. Such a cause of action must be alleged in the material facts before particulars may be given. One cannot under the cover of particulars of one corrupt practice give particulars of a new corrupt practice. They constitute different causes of action.

14. In exactly similar manner the present election petition does not contain a concise statement of material facts nor the facts regarding particulars of corrupt practice adopted by the respondent. So far Ashraf Kokkur Case (Supra)) on which heavy reliance was placed by learned counsel for the election petitioner is concerned, the Court is of the opinion that in view of the facts and circumstances of the present case the petitioner may not get any benefit from the said case. In Ashraf Kokkur Case (Supra) the returned candidate was not eligible to contest the election since there was allegation in the election petition that he was having disqualification for Membership as he was holding the post of Chairperson of Kerala Sate

Wakf Board. In the said election petition the fact regarding occupying the said post was specifically mentioned.

15. In view of the facts and circumstances particularly the fact that the election petition does not contain concise statement of material facts nor particulars of corrupt practice adopted by the respondent in the election , the Court is of the opinion that election petition is required to be rejected at its threshold nor the amendment petition is required to be entertained at such belated stage that too after commencement of trial in the election petition. In view of the facts and circumstances, the interlocutory application i.e. I.A. No. 6627 of 2016 filed on behalf of the returned candidate/ respondent is allowed and the election petition as well as the amendment petitions are dismissed.

(Rakesh Kumar, J)

अधीक्षक, सचिवालय मुद्रणालय,
बिहार, पटना द्वारा प्रकाशित एवं मुद्रित।
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